



## Documentation, Human Rights and Transitional Justice

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## Documentation, Human Rights and Transitional Justice

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The role of testimony and documentation is crucial to human rights work in transitional contexts. Such evidence is vital in societies seeking to deal with a past of human rights violations as well as for ongoing human rights campaigns. The documentation of past human rights violations can help with the prosecution of perpetrators, identification of victims for reparations programs, and the planning of memorials. It can also contribute to the embedding of a new human rights culture through the active dissemination of personal testimonies which can sensitize the public to past violations, assist in re-writing of school text books and other educational materials, and lead to recommendations for new forms of human rights practices. These are practical measures of dealing with the past which are all underpinned by accurate knowledge of violations and the contexts which made them possible. But at a deeper level, information, testimonies and archives can shape narratives of the past and the future, and they can arguably help to define a new social contract between citizens and the state following gross human rights violations, and give voice to ongoing tensions and disagreements about what, in fact, constitutes the past.

That being said, the identification, protection, preservation and management of archives and the collection of testimonies related to human rights violations, as well as their dissemination and utility within transitional justice mechanisms, has often been overlooked. Both partners of the editorial team, INCORE and swisspeace, have been working on addressing this gap by bringing together academic, practitioners and policy makers. At swisspeace the Archives and Dealing with the Past project is a joint initiative of the Human Security Division of the Swiss Federal Department of Foreign Affairs, the Swiss Federal Archives and swisspeace.<sup>2</sup> In addition to research, publications and training the project operates as a platform bringing together diverse actors working on archives in the context of dealing with the past processes and to this end organises a regular conference. In 2012 the focus was ‘The Importance of Archives in Dealing with the Past’, in 2013 ‘Archives of

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<sup>1</sup> This is a pre-copyedited, author-produced PDF of an article accepted for publication in *Journal of Human Rights Practice* following peer review. The version of record Brandon Hamber and Gráinne Kelly (2016). Practice, Power and Inertia: Personal Narrative, Archives and Dealing with the Past in Northern Ireland. *Journal of Human Rights Practice* (2016) 8 (1): 1-5 is available online at: <http://jhrp.oxfordjournals.org/content/8/1.toc>.

<sup>2</sup> See: <http://archivesproject.swisspeace.ch/>.

Transitional Justice Mechanisms’, and in 2015 ‘Securing Archives at Risk’<sup>3</sup>. Key note speakers, panel discussions and presentations of research ensure discussions take place with a diverse public audience, while follow up expert workshops accompany the conferences to guarantee that knowledge can be continually produced in this new but growing area of interest. An overarching series of lessons have emerged over the course of these activities, which have contributed to the motivation for publishing this special issue, namely that archives and dealing with the past are important fields to bring together; that archivists and dealing with the past researchers and practitioners do not exchange often enough; and that thorough and ongoing engagement with this topic by actors collaborating across epistemic communities can improve both the planning, implementation and impact of transitional justice.

Building on its long history of developing digital modes of gathering and disseminating conflict-related materials, INCORE (International Conflict Research Institute, based at Ulster University) developed a new, European Union-funded project to develop an online archive of personal testimonies related to the conflict in and about Northern Ireland. Recognising the complex ethical, legal and practical issues associated with such an endeavour, the project sought the expertise and insights of a range of international experts to both advise the project development and generate new debates and thinking, particularly around the digital aspects of archiving and effective dissemination of content. This engagement culminated in both private meetings with a wide range of practice organisations in Northern Ireland and public seminars during 2014, all of which are available online.<sup>4</sup> In November 2014, INCORE convened an international conference *Accounts of the Conflict: Digitally Archiving Stories for Peacebuilding* in Belfast, Northern Ireland to further explore the role of digital archives of personal narratives, oral histories and testimonies in societies emerging from conflict. Keynote addresses from those with experience of developing archives of sensitive materials in Croatia, South Africa, Argentina and USA set the scene for further in-depth workshop discussions involving both local and international academics and practitioners on a range of thematic areas, including ‘creating space for conflicting stories’, ‘archives, exclusion and forgotten voices’, the politics and practicalities of tagging and searching archives’ and ‘creating archives for a variety of audiences’.<sup>5</sup> INCORE continues to support the development of *Accounts of the Conflict*<sup>6</sup> and to engage in wider local and international debates around this growing field of interest from both transitional justice and peacebuilding perspectives.

This special issue of the *Journal of Human Rights Practice* on Documentation, Human Rights and Transitional Justice therefore builds on the ongoing work of swisspeace and INCORE, and seeks to continue to build on the scholarship and practice in this burgeoning area. It brings together academics and practitioners in an exchange on the role that documentation and collection of narratives of conflict can, does, and should play in addressing human rights abuses of the past, ensuring non-repetition of violations, and establishing a human rights legacy for the future. The articles included in this collection have

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<sup>3</sup> The report is available on-line:

[http://archivesproject.swisspeace.ch/fileadmin/user\\_upload/archivesproject/Report\\_conference\\_securing\\_archives\\_at\\_risk.pdf](http://archivesproject.swisspeace.ch/fileadmin/user_upload/archivesproject/Report_conference_securing_archives_at_risk.pdf).

<sup>4</sup> <http://accounts.ulster.ac.uk/repo/seminars>

<sup>5</sup> <http://accounts.ulster.ac.uk/repo/conference/>

<sup>6</sup> <http://accounts.ulster.ac.uk>

been selected for their diversity and to ensure as broad a range of discussions as possible in this under-explored area. Importantly this diversity, both in terms of disciplinary insights and empirical contexts, retains coherence through the ways in which each article speaks to a series of cross-cutting themes.

Bringing these articles together illustrates how the topic of documentation, human rights and transitional justice substantially relies upon insights from multiple disciplines. For example, Collins and Accatino make sense of legal procedure and judicial forms of evidence through applying work in memory studies, cultural studies and narrative studies on the nature of ‘truth’ and ‘narrative’. This enriches their detailed knowledge of the law in Chile by distinguishing between *what is known* and *what is proven* in a court of law, highlighting how the two categories are not always the same and that re-traumatisation of victims can result from this. Likewise, the articles by Read, and Jones and Oliveira are explicitly positioned at the intersection between archival science and other disciplines. In the case of Read, the author brings together peace and conflict studies and, in particular, peacekeeping practice and literatures, with archival science in order to illustrate the ethical ramifications of decisions being taken in Sudan over UNAMID’s role as human rights monitor and information collector. In Read’s work we see that these two roles stand in tension and it is not enough to rely solely on peacekeeping principles or principles of archiving when analysing what such documentation means for future prosecutions, narratives of the conflict and the safety of individuals. For Jones and Oliveira, their article connects constructivist literature on archives with the new democratic space literature used in development studies in order to re-think the role which archives of truth commissions can play in shaping the social contract following massive human rights violations and a process of truth-seeking. Roger’s article links peacebuilding processes, psychology and the archive – showing how the political context can shape narratives not only during an oppressive past but also during times of peace. It explores the idea that as a peace process unfolds perpetrators of violence can be expected to “perform” and confess, shaping their narratives accordingly. This could arguably affect the nature of archives and testimony creating a new form of coercion that results in “elisions in the testimonies, foreclosures or absences”. The articles from both Visoka, and Hamber and Kelly, are also concerned with how the political context affects the nature of archives and contested narratives in particular. Focusing on the Northern Ireland context, Hamber and Kelly demonstrate how the ongoing contestation of narratives about the past conflict, within a context of a consociational power sharing arrangement, could lead to a new official oral history archive that is de-politicised and artificially ‘balanced’. Visoka’s article grapples with the challenge of creating a bottom-up, inclusive, virtual memorial to those who lost their lives in the Kosovo conflict and the particular role which civil society can play in delivering on wider transitional justice imperatives. This approach cannot be understood without recourse to knowledge generated from the perspective of lawyers, anthropologists, memory experts and archivists among many others. An overriding theme is also that context is important in how the politics of archives and their uses unfold.

This starting point of disciplinary diversity and its particular relevance for the topic of this special issue allows us to unpick the complicated relationship between documents, archives, truth, evidence and knowledge. These categories may be taken for granted in some forms of practice but the articles included here all unsettle any easy understanding of how we know what we know about human right abuses. For example, Read makes a distinction between the material archive, which consists of data and records produced and collected by

UNAMID, and the imaginative archive, which governs what can be said about Darfur, offering a lens through which the conflict must be interpreted in order to remain intelligible in the international community.

Hamber and Kelly highlight the difference between community and official storytelling and archives processes, and how they are all part of the struggle over dominant, subordinate and marginal narratives in Northern Ireland. Rogers talks of secondary archives, such as television documentaries that highlight contested and sometimes edited 'truths', noting that these archives replicate, at least to a degree, the traditional archival format and also complement historical video archives. Collins and Accatino refer to the 'meta-archive' of the case file which will shape societal opinion and institutional practice. They also emphasise the transitory nature of truths which can be found in the archival record, challenging a belief that the truths found in the documents of an archive are in any way settled or final.

The theme of ongoing interpretation of truth is key to the article by Jones and Oliveira who suggest that capturing this transitory nature of truth which has been archived can in fact be helpful for an ongoing dialogue between state and society.

The question of inclusion and exclusion of documentation - and thus voices - at a much earlier stage in a transitional justice process, namely when victims' registers are established in a reparation process, is discussed in Rivas' practice note on victims' registers in the Colombian context. This article shows how crucial the preparation, conceptualization and setting up of procedures that are considered as purely operative can be in providing for a just and inclusive reparation process. The political and legal complexity of defining who is a 'victim' is one of the issues explored in this article.

The way in which these discussions unfold in the articles prompt both conceptual and practical questions. The nature of the documents and archives discussed here - as material and discourse - depends in many ways on the motivations for documenting and using archives, as well as defining what a document and an archive actually are and the political realities that contextualise them. As already mentioned above, the articles in this special issue include imaginative archives, meta-archives, secondary archives, community archives and archives as new public and political spaces that are unfolding in real time.

However, there is also an important element in each of the articles, that is the practical decisions being taken with respect to the direct imperatives of collecting information, addressing impunity and supporting the respect for human rights. In the article by Visoka the process of documenting war crimes and human losses in Kosovo has an emancipatory purpose in addition to that of information collection for future use in prosecutions. The description of the Kosovo Memory Book is as much about using civil society initiatives to counter ethno-national battles over memory as it is about documentation. In the article by Read UNAMID's archive contains information collected for the specific purpose of human rights monitoring but the archive can also be understood as a source for analysing the international community's approach to Sudan, as well as their understanding of the conflict there, and the underlying assumptions which inform peacekeeping practice. This is echoed in the article by Collins and Accatino in which documentation and evidence are vital for successful prosecutions in Chile, but which form case files that have a broader impact in terms of social memory and understanding of the past. Rogers argues that different types of archives in what she calls (post) conflict societies can shape the peace discourses, both

opening new spaces for engagement but also to potentially closing down discussions about the past. Hamber and Kelly show that community storytelling in Northern Ireland has been part of the dealing with the past landscape for decades, and continues to play a vital role in burgeoning transitional justice processes and the recommendations for an official oral history initiative.

The special issue therefore provides the reader with a wide variety of material as we move between Chile, Sudan, Kosovo, Colombia, Northern Ireland and South Africa, and a range of other country contexts, as well as between museums, community storytelling initiatives, digital repositories of testimony, case-files, memory books, human rights monitoring and victims' registers.

Each of the authors responded to the topic of *Documentation, Human Rights and Transitional Justice* in a different way, illustrating the rich discussions which can be had if we more closely take account of the question of documentation and archiving of human rights abuses. In transitional justice literature and the human rights field the topic has been under-explored but we can see here how it is vital for the legacy of transitional justice mechanisms, for the establishment of respect for human rights, for ongoing contestations over how to remember the past, and for making sense of what is often thought of as senseless.